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Government  
Publications

**National Energy Board**



# ***How to Intervene***

The Board's public hearings provide interested parties with an opportunity to present evidence and views on the matters being considered. This bulletin describes how to participate in the hearing process.



**Information Bulletin<sup>4</sup>**

**January 1984**



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### THE BOARD

The National Energy Board is an independent federal agency that was created by the Parliament of Canada in 1959. The Board's prime function is to regulate certain areas of the oil, natural gas, and electrical utility industries. Its powers and jurisdiction are based on the National Energy Board Act. Copies of the Act are available from the Canadian Government Publishing Centre, Supply and Services Canada, Ottawa, K1A 0S9 (Price: Canada \$2.75; other countries \$3.30, prices subject to change).

### PUBLICATIONS

This information bulletin is one of a series that the Board is publishing on its activities and procedures. Comments on this bulletin or suggestions for future topics would be most welcome.

These bulletins provide general information only. For exact details on particular items, see the relevant legislation.

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For further information, please contact:

Mrs. Ann Sicotte  
Chief of Information Services  
National Energy Board  
473 Albert Street  
Ottawa, Canada  
K1A 0E5

(613) 992-3972  
Telex: (NEB OTT) 053-3791

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Pour de plus amples renseignements,  
veuillez communiquer avec:

Mme Ann Sicotte  
Chef des services d'information  
Office national de l'énergie  
473, rue Albert  
Ottawa (Canada)  
K1A 0E5

(613) 992-3972  
Télex: (ONE OTT) 053-3791





# HOW TO INTERVENE

## Foreword

The practices described in this information bulletin are those currently followed by the National Energy Board.

Should the Board's current review of its Rules of Procedure result in changes, this bulletin will be revised and reissued.

## The Public Hearing Process

An overview of the hearing procedure is provided in Information Bulletin No. 2 — "The Public Hearing Process". This bulletin should be read in conjunction with the previous one.

## The Intervention Process

Intervention is an important element of the Board's hearing process. An intervenor is anyone who has an interest in a matter being considered and who formally participates in the proceedings. If an interest in the matter cannot be shown, the Board may refuse to accept the party as an intervenor.

Intervenors have the right to participate fully in hearings. That is, they may present evidence and argument, and conduct cross-examination, subject to the Board's power to control its own proceedings.

Intervenors at the Board's hearings include pipeline companies, electrical and gas utilities, consumer and trade associations, various industries, governments, special interest groups, and individuals.

## Legal Counsel

Intervenors are usually represented by legal counsel. A lawyer will ensure that the rights of an intervenor are protected. Counsel will prepare the intervention and ensure that any material to be filed meets the Board's requirements. Counsel will help decide whether an intervenor's case needs expert witnesses

and, if so, will prepare them for the hearing. At the hearing, counsel will take part in the filing of exhibits, the presentation of evidence, the argument of any procedural or other motions, cross-examination, and final argument.

As the proceedings are complex and involve legal issues, the Board encourages parties to be represented by legal counsel. Such representation, however, is not a requirement to participate in a hearing conducted by the Board.

In addition, intervenors or their counsel may contact Board Counsel for assistance with hearing proceedings.

## The Legislation

The first step in preparing for a hearing is to acquire an understanding of the National Energy Board Act, or at least of those parts of it with which the hearing will be involved. Part I of the Act deals with the establishment of the Board, and Part II with its advisory functions. Part III covers authorizations for the construction of pipeline or power line facilities. Pipeline tolls and tariffs are the subject of Part IV. The expropriation of land for the rights of way of pipelines and power lines is covered by Part V. Part VI of the Act provides for the licensing of exports and imports of natural gas, oil and electricity.

Other important documents are the NEB Rules of Practice and Procedure and, for export hearings, the NEB Part VI Regulations. The Act and both these documents may be purchased from the Canadian Government Publication Centre by writing to the address given on the inside front cover of this bulletin. An index and table of contents to the Act are available free of charge by contacting the Board's Information Services at (613) 593-6936.

## Preparing for the Hearing

Most matters considered by the Board at public hearings are complex. Adequate preparation, therefore, is essential for effective participation. Inadequate preparation can lengthen the proceedings and increase the cost of participation to all involved.

It is easy for anyone unfamiliar with the Board's proceedings to underestimate the time required to prepare for them. It is advisable to start work on an intervention at the earliest opportunity. To provide all parties with the maximum possible advance notice, the Board issues a news release as soon as it receives a major application. In addition, all applications which have been received or which are expected are listed in the Board's Regulatory Agenda which is issued on a quarterly basis.

## The Notice of Hearing

When the Board decides to hold a public hearing on any matter, a Notice of Hearing is published in various newspapers. The papers selected are those having the widest distribution to the public that would be most affected by the subject of the hearing.

A sample notice is shown in Appendix 1. It states the subject, and when and where the hearing will be held and how anyone wishing to intervene may obtain a copy of the hearing order. The order provides more detailed information on the procedures to be followed, including how to intervene.

In all cases, the essential first step is to submit a written intervention by the deadline shown in the Notice of Hearing.

## The Written Intervention

An intervention should include at least the following:





1. **Identification of the Hearing.** The name of the applicant, the designation of the application, and the hearing order number.
2. **Statement of Interest.** This statement should clearly and concisely outline the nature of the party's interest in the application.
3. **Position on Application.** Where possible, an intervenor should state whether he supports or opposes all or part of the application, and why.
4. **Hearing Participation.** An intervenor should indicate whether he intends to appear before the Board at the hearing, and where, if the hearing is to be conducted in more than one location.
5. **Receipt of Application.** An intervenor should indicate whether he wishes to receive a copy of the application or a particular part of it.
6. **Language.** An intervenor should state whether he wishes to be heard in English or French. Simultaneous interpretation is provided at the hearing when an intervenor requests this service in his intervention.
7. **Communications.** An intervention should include the name, full address, telephone number (including area code), and telex number, if any, of the intervenor or his solicitor. Rural residents should also provide the numbers of their lot, concession, and nearest concession road, and the names of their township and county.
8. **Signature.** An intervention must be signed by the intervenor or his solicitor.

#### **Late Interventions**

If a person decides to intervene before the deadline has passed but

for some unavoidable reason a complete written intervention will be submitted late, the prospective intervenor should inform the Secretary of the Board (refer to bottom of sample Notice in Appendix 1) before the deadline for intervening specified in the Notice of Hearing. The person should state that he wishes to intervene and when the intervention will arrive.

If, after the deadline has passed, a person decides to intervene, the intervention must be accompanied by a Notice of Motion. The Notice should request the Board to accept the late intervention, and should indicate that a motion to this effect will be introduced by the person at the opening of the hearing. Motions are discussed later in this bulletin.

#### **Extent of Participation**

Some intervenors appearing before the Board have an interest in only one or two aspects of the application. Such parties may, if they wish, restrict the extent of their intervention and participation in the hearing to those matters that particularly concern them.

Although an intervenor may not wish to participate extensively in presenting evidence, cross-examination, or argument, a written intervention should be supported by an appearance at the hearing. Submissions which are not supported by an appearance are given less weight in the Board's deliberations because the intervenor was not available to answer any questions that the Board or parties might have wished to ask.

#### **Pre-Filed Material**

##### **(a) Information Requests**

###### **(i) The Board**

Applicants are required to provide certain detailed

technical information with their applications. The information required for various types of applications is stipulated in the various rules, regulations, and guidelines of the Board, referenced in Appendix 2.

Should an application be judged to be incomplete in this respect, the Board will issue one or more letters to the applicant requesting the missing information.

Letters may also be issued later and even during the hearing to request additional information.

All such requests and their responses form part of the application, and the Board requires an applicant to serve a copy of them on all interested parties.

##### **(ii) Parties**

In addition to the information requests issued by the Board, any party to the proceeding may request additional information from any other party. This is done by writing directly to the party concerned. Both the request and the response should be filed as exhibits at the hearing. See the hearing order for specific instructions concerning an individual hearing.

Where a response to an information request is not forthcoming, a party may bring a Motion before the Board requesting that the information be provided. Motions are discussed later in this bulletin.







## **(b) Written Direct Evidence**

Often the Board requires that parties who intend to present direct evidence at a hearing prepare their evidence in written form prior to the hearing. Copies of this written direct evidence must be provided to the Board and all parties to the proceeding in accordance with the instructions in the hearing order.

## **Filing and Service Requirements**

The hearing order stipulates the number of copies of documents to be submitted to the Board in connection with a particular hearing, together with the deadlines for providing them. An intervenor is required to serve a copy of his intervention, and anything else he submits, on all other parties. For this reason, the Board publishes for each hearing a list of interested parties and their addresses. The list is issued to all parties shortly after the deadline for filing interventions.

In addition, the Board requires an affidavit (a written statement sworn before a commissioner of oaths or a notary public) showing proof that service of each of these documents has been carried out in accordance with the instructions given in the hearing order. Two copies of each affidavit are to be filed with the Board, either before or at the commencement of the hearing, and are entered as exhibits in the hearing.

All documents filed with the Board should be addressed to the Secretary. However, when a hearing is in session documents may be filed at the proceeding directly with the Court Clerk. The applicant and other interested parties may also be served at the hearing with their copies of the documents filed in this manner.

At the commencement of a hearing, the Board generally requests

that two copies of each document filed in the proceeding be provided to the Court Clerk for exhibit purposes.

Either the applicant or an intervenor may apply to the Board for relief from certain service requirements specified in a hearing order where such service cannot realistically be carried out or where it is too burdensome.

## **Motions**

A Motion is a formal request made by the applicant or an intervenor that requires a ruling from the Board. Motions are made for several reasons, such as:

- to obtain information otherwise not forthcoming from the applicant or an intervenor that is considered necessary by a party for the preparation of his case.
- to request relief from certain filing or service requirements.
- to request leave to file a late intervention or other document.
- to request an adjournment.

If a Motion is to be made, the Board requires that a written Notice of Motion be filed with the Secretary. The number of copies to be filed is stipulated in the hearing order. A copy of each Notice of Motion must also be served on the applicant and other parties.

Once a Notice of Motion has been filed, the Board will set a date for hearing it. A decision on a Motion is usually given by the Board from the bench.

## **Hearing Documents**

During the course of a proceeding, intervenors receive a number of documents from the Board, the applicant, and other intervenors. These documents are provided in accordance with the instructions given in the hearing order. For

example, the Board generally requires that the applicant serve a copy of the application and supporting material on all parties. Intervenors must usually provide all other parties with a copy of each document they file in the proceeding. Such documents include interventions, submissions, written direct evidence, and any Notices of Motion.

For each hearing, the Board issues a hearing order, a list of interested parties and their addresses, news releases and, at the conclusion of the hearing, Reasons for Decision. In addition, memoranda of guidance, procedural and other orders, and correspondence may be issued as required. At the commencement of the hearing, a list of appearances showing the order in which the applicant and interested parties are to appear and a list of exhibits itemizing all documents filed as evidence in the proceeding may be obtained from the Court Clerk.


When a hearing is in session, copies of many of the documents filed in the hearing may be obtained from the Board's Hearing Registry. Transcripts are available for viewing by the public in the Board's Library. Although copies may not be reproduced, transcripts of proceedings may be purchased from the Court Reporter.

## **Expert Witnesses**

Many parties appearing before the Board make extensive use of expert witnesses. An expert witness is a witness presented for his scientific or professional knowledge and experience. He may have a background in engineering, geology, accounting, economics, environmental studies, or other technical fields, depending on the nature of the case.

Applicants generally present expert witnesses, and intervenors are free to do the same. An expert





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<https://archive.org/details/31761117087122>



provides an intervenor with professional advice in the preparation of the case.

### **Subpoenas**

A subpoena is a form of written command issued by a court to order a person to appear before it. The National Energy Board, as a court of record, has the authority under section 10 of the Act to issue subpoenas.

To present his case an intervenor may require as a witness someone who might be unwilling to come to the hearing. The attendance of such a witness may be compelled by serving him with a subpoena. A subpoena is issued by the Secretary of the Board.

As an intervenor may later be asked to provide proof that he has served the subpoena on the desired witness, it should either be delivered by a responsible individual or sent by double registered mail.

An intervenor should bear in mind that the witness will probably expect the intervenor to compensate him for his reasonable expenses in attending the hearing.

### **When and How to Intervene in Applications Involving the Construction of Facilities**

The Board conducts two types of hearings on the construction of pipeline or power line facilities. The first type is to decide whether the facilities should be built. If the application is approved, a Certificate of Public Convenience and Necessity is issued by the Board, with the approval of the Governor in Council, authorizing the construction of the line and the general routing of the facilities. After the certificate has been issued, the certificate-holder must apply to the Board for approval of the detailed routing of the facilities. The second type of hearing, if required, is then conduct-

ed under section 29 of the NEB Act. Such hearings occur where a landowner opposes some aspect of the detailed routing. Information Bulletin No. 1 — "Route Approval Procedures" describes more fully the Board's process in this respect.

For effective intervention in facilities applications, it is important that representation be made in the appropriate hearing. For example, objections to having the facilities constructed are fruitless when made at a hearing dealing with the detailed routing of the line. At this point, the Board, with the approval of the Governor in Council, has already decided that the facilities are required in the public interest. Interventions of this type should be made at the certificate hearing, i.e. the hearing which decides on the pipeline or power line construction. Conversely, discussion of the detailed route is appropriate only at the second hearing.

### **Challenges**

As a general principle, the Board seeks to hear the views of all parties. Nevertheless the applicant or any other party or even the Board itself may challenge a person before or at the hearing to show that the person has an interest in the proceedings. An interest means that a person would be affected by the granting or denial of the application. If a prospective intervenor cannot demonstrate such an interest, the Board may refuse to accept him as an intervenor. A prospective intervenor should therefore be ready in advance to answer such a challenge.

### **The Hearing Itself**

Public hearings held by the Board are structured and formal in nature to assure fairness to all parties. They are very similar to proceedings conducted by a court of law. Hearing participants are permitted to con-

duct cross-examination and to present evidence and argument. Argument must be based on the evidence. For this reason argument follows the hearing of evidence. It is, therefore, not desirable for argument and evidence to be mixed together.

In presenting evidence and argument, all hearing participants should be as concise and to the point as possible. All parties should follow the procedures established by the Board for the hearing. These procedures are set out in the hearing order, and any memoranda of guidance, procedural orders or rules of practice issued.

For a step-by-step summary of the hearing process, see Appendix 3. Step 10 deals with the actual hearing itself.

### **Evidence**

Evidence is information given by a witness orally or in writing to establish facts. The examination by the counsel or other individual who called the witness to the stand is known as examination in chief. Should a party wish to present documents in support of his case, they may be filed as exhibits as part of the process of giving evidence.

### **Cross-examination**

Cross-examination is the questioning of a witness who was called by another party. All parties to a hearing may cross-examine the applicant's witnesses. Likewise the applicant and other parties may cross-examine any intervenor's witnesses. Because it permits the verification of the evidence presented, cross-examination is an important element of Board proceedings. It helps to ensure that the Board has a complete and accurate record on which to base its decision.





## Argument

Argument is the final stage of the hearing. The applicant and intervenors state their reasons for or against the application. The basic difference between evidence and argument is that evidence presents facts and argument presents conclusions based on the evidence.

## Costs and Funding

In general, parties making representations at a public hearing being conducted by the Board must do so at their own expense. The Board does not have the authority to award costs against an applicant, with the following exception.

Under section 29 of the National Energy Board Act, the Board conducts local public hearings on the detailed routing of a pipeline or a power line when the proposed routing is opposed by any landowner directly or indirectly affected by it. In such cases, the Board has the authority to award landowners their reasonable costs of participating in the hearing. These costs are paid by the company that intends to build the line.

## The Record

The decision of the Board arising from a public hearing is based on

the record of the proceeding. The record consists of the application, interventions, responses to information requests, exhibits, hearing transcripts, submissions and argument of parties, related orders and decisions of the Board, correspondence and any other material filed in the proceeding.

Once the hearing has been completed, the record of the proceeding is closed. As a general rule, no further submissions are accepted. Therefore, an intervenor should ensure that his views are made known before the close of the hearing, so that they may be considered in the Board's deliberations.

The record of a proceeding may be examined in the Board's Library, Room 962, 9th Floor, Trebla Building, 473 Albert Street, Ottawa.

## A Summary of the Intervention Process

To summarize the suggestions in this Information Bulletin, the steps in intervening are as follows:

1. An intervenor should consider whether or not to retain a lawyer.
2. An intervenor should read, in addition to this bulletin: the hearing notice, the hearing order, Information Bulletin No. 2, the NEB Act, the Rules of Practice and

Procedure, and the Part VI Regulations if an export or import has been applied for.

3. The written intervention should be prepared defining the party's interest in the proceeding. It should also state whether simultaneous interpretation will be required at the hearing, whether the party requires a copy of the application, and whether the party intends to appear at the hearing. The intervention should be submitted by the deadline stipulated in the hearing order.
4. After reviewing the application, an intervenor should decide whether or not to retain expert witnesses.
5. Should an intervenor feel that additional information is needed, he should send information requests to the Applicant and other parties.
6. Written direct evidence should be prepared and pre-filed, if the hearing order requires this step.
7. An intervenor should acquire an understanding of the hearing sequence and know what to do when.
8. All hearing participants should be as clear and concise as possible.







CANADA

## NATIONAL ENERGY BOARD

# NOTICE OF PUBLIC HEARING

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### TQM Tolls Application

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The National Energy Board will conduct a hearing of an application dated 26 August 1983 by Trans Québec & Maritimes Pipeline Inc. for orders under Part IV of the National Energy Board Act fixing the just and reasonable tolls to be charged by the Company for the transmission of natural gas.

The hearing will commence at 9:30 a.m. on Wednesday, 11 January 1984, in the Hearing Room, Treble Building, 473 Albert Street, Ottawa, Ontario.

The hearing will be public and will be held to obtain the evidence and relevant views of interested parties, groups, organizations and companies on the application.

Any person intending to intervene must file his intervention with the Secretary of the Board by 25 November 1983. Such persons should write or Telex the Secretary of the Board, as soon as possible, requesting a copy of Order RH-4-83 (available in English or French) which sets out the procedure for intervening and the locations at which copies of the application may be examined.

For further information, telephone the Board's Information Services at (613) 593-6936.

Dated at Ottawa Ontario, 20 October, 1983.

**G. Yorke Slader**  
**Secretary**  
**National Energy Board**  
**473 Albert Street**  
**Ottawa, Canada**  
**K1A 0E5**  
**Telex No. 053 3791**





## INFORMATION REQUIREMENTS FOR APPLICATIONS TO THE NATIONAL ENERGY BOARD

The following sets out the rules, regulations, and guidelines which stipulate the information to be included in applications to the Board.

	<b>Document Specifying Information Requirements</b>
<b>Applications to Export or Import Energy</b>	NEB Part VI Regulations
—natural gas	section 4
—electricity	section 6
—oil	section 25
<b>Applications to Construct Facilities</b>	NEB Rules of Practice and Procedure
—gas pipelines	Part I of Schedule
—oil pipelines	Part II of Schedule
—international power lines	Part III of Schedule
—environmental information (pipelines)	Part VI of Schedule
—environmental information (power lines)	Guidelines (18 July 1974)
—socio-economic Information (pipelines)	Guidelines (11 August 1979)
—oil and gas pipelines	Memorandum of Guidance (12 December 1963)
<b>Applications for Tolls and Tariffs</b>	NEB Rules of Practice and Procedure
	Part IV of Schedule
	Part V of Schedule
	Part VII of Schedule

The guidelines on environmental and socio-economic information requirements may be obtained free of charge by writing to the Secretary, National Energy Board, 473 Albert Street, Ottawa, K1A 0E5.

The Part VI Regulations and the Rules of Practice and Procedure may be purchased from the Canadian Government Publishing Centre at the address given on the inside front cover of this bulletin.





## STEP-BY-STEP SUMMARY OF THE HEARING PROCESS

The following is a summary of the steps involved in a typical public hearing conducted by the Board.

- (1) The applicant files the application with the Secretary of the Board. The Board issues a news release to announce the filing.
- (2) The Board examines the application and may issue information request letters to clarify certain points raised or to obtain information not included with the application. (Note: Intervenors are permitted to do likewise after they officially become part of the proceedings).
- (3) When sufficient information has been received, the Board issues a hearing order that sets a date and location for the hearing; provides the deadlines for the filing of testimony by the applicant and intervenors; directs the applicant to publish a notice of hearing in certain specified papers; and directs the applicant to serve a copy of the application and hearing order on interested parties. The Board also issues a news release with the hearing order.
- (4) Intervenors file their written interventions with the Board and serve them on the applicant by the deadline specified in the hearing order.
- (5) The Board issues a list of interested parties and their addresses to the applicant and all intervenors.
- (6) Intervenors serve their interventions on other intervenors.
- (7) The applicant provides the Board and all interested parties with copies of his written direct evidence by the deadlines specified in the hearing order.
- (8) At a later date, intervenors provide the Board, the applicant, and all other interested parties with copies of their written direct evidence.
- (9) At the commencement of the hearing, participants obtain a pre-numbered exhibit list and a list of appearances from the Court Clerk.
- (10) The hearing begins:
  - a. The Presiding Member of the hearing panel gives an opening statement.
  - b. The applicant registers his appearances and enters the application, supporting documents, and affidavits of service as exhibits on the record.
  - c. Intervenors register their appearances and enter their interventions, written direct evidence, and affidavits of service as exhibits for the record.
  - d. The Board deals with any preliminary motions.
  - e. The applicant presents his direct evidence (examination-in-chief). The evidence is usually segregated into separate subject matter with a Panel of expert witnesses addressing each subject area.
  - f. Intervenors cross-examine the applicant according to the order of appearances established by the Board.
  - g. Board Counsel examines the applicant's direct evidence. The Board Members hearing the application may ask questions.
  - h. The applicant then conducts examination (re-examination).
  - i. Intervenors present their direct evidence in the order of appearances.
  - j. The applicant and other intervenors cross-examine.
  - k. Board Counsel and the Board Members may ask questions on the direct evidence of an intervenor.
  - l. The intervenor then conducts re-examination.
  - m. The applicant may present reply evidence.
  - n. The applicant presents his argument.
  - o. Intervenors present their arguments in the order of appearances.
  - p. The applicant presents his final or reply argument.
  - q. The hearing concludes and the record of the proceeding closes. The Board considers no further submissions on the matter.
- (11) The Board then makes its decision and prepares its reasons for decision.
- (12) The Board releases its Reasons for Decision to the applicant, all interested parties in the proceedings, and the Board's mailing list. Reasons for Decision may be issued prior to or after any required approvals by the Governor-in-Council. In addition, the Board issues a news release on the matter.



